

THE "ETHICS IN GOVERNMENT ACT OF 1978" (S. 555, AS PASSED BY THE SENATE ON 27 JUNE 1977 AND BY THE HOUSE ON 27 SEPTEMBER 1978) AS IT RELATES TO INTELLIGENCE AGENCIES

1. Officers who perform intelligence or counter-intelligence functions for the U.S. Government, particularly those at the higher levels, are unique among Government employees to the extent that they deal on a continuing basis with some of the most sensitive information which this country possesses. Activities in which these individuals engage consist of extremely sensitive national security matters. The organizations in which these officers are employed are high priority targets of hostile intelligence services. For example, a detailed list of top-level officers of the CIA, coupled with a list of the positions these officers occupy in the organization--which would reveal their functions--would be an invaluable tool which a hostile intelligence service could employ to target its resources, and which it could use as a benchmark to evaluate information received from other sources (such information on a hostile intelligence service would be extremely valuable information for the U.S.). Finally, to the extent that names, functions, and addresses of intelligence officers become public knowledge, these individuals may become priority targets for terrorist groups.

The Ethics in Government Act provides for the filing of financial disclosure reports by top-level Government officers, including those employed by intelligence agencies. These reports would be reviewed by appropriate authorities under the terms of the bill, to identify conflicts of interest. The problem, insofar as intelligence agencies are concerned, arises from the requirements in the legislation that the financial reports would be available to the public. In recognition of the fact that such a requirement is not compatible with the legitimate needs and requirements of intelligence agencies, both the House and the Senate versions of S. 555 provide for maintaining the confidentiality of reports filed by intelligence officers (subsection 205(a) of the House bill and paragraph 304(b)(2) of the Senate bill). The two versions of the bill, however, differ in the extent to which such reports would not be made available to the public.

The provisions in subsection 205(a) of the House bill meet the needs of intelligence agencies by providing as follows:

(a) Reports filed by individuals in named intelligence agencies, and individuals engaged in intelligence activities in other agencies, shall not be made public "...if the President finds that, due to the nature of the office or position occupied by such individual, public disclosure of such report[s] would compromise the national interest of the United States."

(b) To protect the affiliation of certain individuals with intelligence agencies, the President may authorize the filing of additional reports to protect their cover.

These provisions would allow for the protection not only of persons who are presently undercover, but those who may in the future be undercover; public disclosure of the fact that individuals in the second category are affiliated with an intelligence agency would prejudice the ability of the Government to place them undercover in the future. More importantly, this formulation goes beyond the cover issue and addresses the counter-intelligence aspect of the problem, by allowing the President to maintain the confidentiality of the details of the top-level organization and managers of intelligence agencies, so as to avoid providing hostile elements with a blueprint of such information for detrimental purposes.

The Senate bill, on the other hand, would provide only for protection against public disclosure of the identities of particular individuals who are--at the time of filing--"undercover agent[s] of the Federal Government." This provision is insufficient because it does not provide flexibility for protecting the identities of certain individuals who may be placed undercover in the future; nor does it address the counter-intelligence problem--maintaining the confidentiality of certain sensitive functions and the organization of intelligence agencies.

The provisions in the House bill would not necessarily result in the non-public availability of all reports filed by intelligence officers at all times. What it would do is provide needed flexibility for the President to make determinations that intelligence officers need not have their reports available to the public if doing so would reveal their identity or provide information on aspects of intelligence agencies and officers that could be used to harm the Government's intelligence capability and organization. The attached suggested conference report language reflects these considerations.

2. An amendment proposed on the floor of the House on 27 September 1978, among other things, would have specifically required that external review of reports filed by intelligence officers would be conducted only under appropriate security procedures. Explicit clarification of this point is appropriate and desirable. Therefore, it is recommended that the following language be inserted in S. 555 immediately following the provisions concerning the filing of reports by intelligence officers (subsection 205(a) of the House bill and paragraph 304(b)(2) of the Senate bill):

"Review of such reports shall be conducted under security procedures determined by the Director of Central Intelligence and approved by the President."

SUGGESTED CONFERENCE REPORT LANGUAGE FOR THE "ETHICS  
•IN GOVERNMENT ACT OF 1978" (S. 555) IN EXPLANATION OF THE  
PROVISIONS CONCERNING INDIVIDUALS IN INTELLIGENCE AGENCIES

"Section \_\_\_\_\_ further provides that, in the case of officers employed by intelligence agencies, the President may determine that reports filed by such individuals shall not be made public. This limited exemption would be used for those individuals who are or may be undercover and whose identity as an intelligence officer must remain confidential. This authority would also allow the President to make a determination that certain reports shall not be made public under circumstances where disclosure of information relating to aspects of intelligence functions, organization and identities would provide foreign intelligence services and other hostile groups with information they could use to harm the Government's intelligence capability; for example, a blueprint of the organization of the CIA or a detailed list of its top officers and their duties. In addition, this section provides authority for the President to authorize the filing of additional reports by intelligence officers in those instances where this is necessary to protect their cover status; in such cases, of course, the officers--if subject to the bill's reporting requirements--would file full reports with their agency. Finally, the section provides language to make clear that any review of reports filed by officers in intelligence agencies would be under security procedures determined by the Director of Central Intelligence and approved by the President."

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4 October 1978

**TO:** Mr. Keith Raffel  
Select Committee on Intelligence  
United States Senate  
Washington, D.C. 20510

Dear Keith:

Here is a copy of a paper explaining our position regarding the provisions in S. 555 that relate to the filing of financial disclosure reports by intelligence officers. Mr. David Schaefer, who is on Senator Abraham Ribicoff's staff, has a copy as well. Senate conferees have not yet been named, but we anticipate that this will be done later today, and that conference will begin tomorrow. Please let me have your thoughts on this matter so we can discuss what additional steps should be taken. I realize you are extremely busy with other matters and I greatly appreciate your help with this problem.

Sincerely,  
SIGNED

STAT   
Assistant Legislative Counsel

Enclosure

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